A.F.R.

20-04-2006

114

HIGH COURT OF CHATTISGARH: BILASPUR

DIVISION BENCH

Coram : Hon'ble Shri S.R. Nayak, C.J.,
Hon'ble Shri D.R. Deshmukh, J

WRIT PETITION NO.162/2004

PETITIONER

J. Hussain
S/o Late Subamia
Aged about 52 years,
(Ex-UDC, Kendriya Vidyalaya,
Along),
C/o. Shabina Typing Centre,
Mohan Talkies Road,
P.O. Jamnipali,
District Korba (C.G.)

V E R S U S

RESPONDENTS

1 Union of India,
Through its Secretary
Department of Education
Ministry of Human Resources and
Development
301, C-Wing, Shastri Bhavan,
New Delhi

2. Deputy Commissioner
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110016

3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Maligaon Chariali,
Guwahati – 781012

4. Principal,
Kendriya Vidyalaya,
P.O. Araimile, Tura,
West Garo Hills,
Meghalaya – 794001

5 Registrar,
Central Administrative Tribunal,
Jabalpur Bench,
Jabalpur (M.P.)

Present:

Shri Amrito Das, counsel for the petitioner.

Shri Narayan Shrivastava, for respondents no.1 to 4

ORAL ORDER

(20.04.2006)

The following oral order of the Court was passed by

S.R. Nayak, C.J.

This Writ Petition arises out of disciplinary action taken by the respondents imposing penalty of removal from service as a disciplinary measure on the petitioner. The facts of the case, in brief, are as follows:

(2) The petitioner was an employee of *Kendriya Vidyalaya Sangathan* since 1977. During the year 1999-2000, the petitioner was posted as Upper Division Clerk at *Kendriya Vidyalaya, Tura* in the State of Meghalaya. The petitioner was served with a charge memo dated 2/3-8-2000 under the provisions of Rule 14 of Central Civil Services (CCA) Rules, 1965 (for short "CCA Rules") and Rule 20 of the Central Civil Services (Conduct) Rules 1964 alleging that the petitioner forcibly entered into the Principal's office around 11:30 a.m. on 24/5/2000 in a fully drunken state and thereby committed misconduct and violated Rule 3 (i) (ii) (iii) of CCS (Conduct) Rules 1964. The petitioner submitted his reply. In the reply, the petitioner admitted that when he entered the office of the Principal, he was in drunken state, but, denied the charge of forcible entry into the Principal's office and offered his unconditional apology for consumption of alcohol and requested the disciplinary authority to take sympathetic view of the matter and forgive him. The Assistant

Commissioner, *Kendriya Vidyalaya Sangathan*, Guwahati, the 3rd respondent herein, passed the order dated 31/8/2000 removing the petitioner from service as a disciplinary measure for the alleged misconduct.

(3) The petitioner feeling aggrieved by the said order of the 3rd respondent preferred an appeal under Rule 23 of the CCA Rules to the Dy. Commissioner, *Kendriya Vidyalaya Sangathan*, 2nd respondent herein. The 2nd respondent dismissed the appeal by his order dated 03/09-07-2001. The petitioner feeling aggrieved by the above two orders of the 2nd and 3rd respondents instituted O.A No.770/2001 before the Central Administrative Tribunal (for short "the Tribunal") Jabalpur Bench, camp at Bilaspur. The Tribunal having opined that the petitioner has admitted the misconduct alleged against him and therefore, conducting enquiry was not necessary and that he was also warned for similar misconduct in the past, refused to grant any relief to the petitioner, and accordingly by its order dated 24/9/2003 dismissed the OA No.770/2001. Hence, this petition.

(4) We have heard learned counsel for the parties.

(5) Learned counsel for the petitioner would contend that though consuming alcohol during the day time and making entry into the office of the Principal of the School, is undeniably a conduct not expected of an employee of the School, that conduct itself would not attract the extreme penalty of removal from service. Learned counsel would contend that the extreme penalty of removal from service, in the facts and circumstances of this case, was unwarranted, particularly because, the petitioner himself realizing

his mistake admitted consumption of the alcohol when he entered the office of the School and tendered unconditional apology for his wrong-doing and requested the disciplinary authority to forgive him.

(6) Having heard learned counsel for the parties, the only question that arises for consideration is whether the extreme penalty of dismissal from service imposed by the 3rd respondent as approved by the 2nd respondent, in the facts and circumstances of this case, could be regarded as the one proportionate to the gravity of misconduct committed by the petitioner. It is well settled by the judgments of the Supreme Court in **B.C. Chaturvedi Vs Union of India and others**[1] **Union of India Vs Ganayutham**[2] and **Om Kumar Vs Union of India**[3], to cite a few, that while reviewing the disciplinary action under Article 226 of the Constitution, in appropriate cases, the Court is entitled to apply the principle of proportionality and the doctrine of Wednesbury Rule of reasonableness. It is held and reiterated that if the penalty imposed by a disciplinary authority, in the facts and circumstances of the case, shocks the conscience of the Court and the Court thinks that it is totally unreasonable, arbitrary and disproportionate to the gravity of misconduct committed by a delinquent, the Court could step in under Article 226 and reduce the penalty. The doctrine of proportionality has come to stay as one of the grounds of judicial review of administrative actions. The doctrine of proportionality is one which confines the limit of the exercise of power to means which

---

1. AIR 1996 SC 484 2. (AIR 1997 SC 3387) = (1997) 7SCC 463
3. AIR 2000 SCW 4361

are proportional to the object to be pursued. In other words, the doctrine of proportionality mandates that disciplinary measures must not be more drastic than is necessary for attaining the desired results. The doctrine of proportionality requires the Court to judge whether the action taken by the disciplinary authority was really needed as well as whether it was within the range of courses of action that could reasonably be followed. It is true that judicial review generally speaking is not directed against the decision but it is directed against the decision-making process. The question of choice and quantum of punishment is within the jurisdiction and discretion of the disciplinary authority. But the disciplinary measure is to suit the misconduct and the delinquent. It should not be vindictive or unduly harsh. It should not be so disproportionate to nature and kind of misconduct as to shock the conscience of the Court and amount in itself to evidence of bias or vindictiveness. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect which is, otherwise, within the exclusive province of the disciplinary authority, if the decision of the authority even as to punishment as a disciplinary measure is an outrageous defiance of logic and rationality, then the punishment would not be immune from correction. It is so because, irrationality and perversity are recognized grounds of judicial review. If a disciplinary measure taken by a disciplinary authority is grossly disproportionate, the said decision is not immune from judicial scrutiny.

(7) In C**ouncil of Civil Service Unions Vs. Minister for Civil Service** [4] Lord Diplock observed :

---

4. (1984)3 ALL ER 935 : (1984) 3 WLR 1174 : (1985)AC 374

" Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". This is not to say that further development on a case by case basis may not in course of time add further grounds. *I have in mind particularly the possible adoption in the future of the principle of 'proportionality'* "

(8) In **R. v. Bamsley Metropolitan Borough Council, ex parte Hook,** [5] where the punishment imposed on a stall holder i.e. loss of his market license, for having urinated in public which has described by LORD DENNING MR as *"the punishment was too severe"*.

(9) In **Hind Construction and Engg. Co. Ltd. Vs. Their Workmen** [6], some workers remained absent from duty treating a particular day as holiday. They were dismissed from service. The Industrial Tribunal set aside the action. Confirming the order of the tribunal, the Supreme Court observed that the absence could have been treated as leave without pay. The workman might have been warned and fined. The Supreme Court observed : *"It is impossible to think that any reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner."*

---

5. (1976) 3 All ER 452,
6. AIR 1965 SC 917 (919-20) : (1965)2 SCR 85

(10) In **Bhagat Ram v. State of Himachal Pradesh,** [7] the Supreme Court observed : "*It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution*".

(11) In **Ranjit Thakur Vs. Union of India** [8], an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court martial proceedings wee initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment. The said order was challenged *inter alia* on the ground that the punishment was grossly disproportionate. Upholding the contention, following Council of Civil Service Union[4] (Supra), and emphasizing that "*all powers have legal limits*", Venkatachaliah, J (as he then was) observed:

> "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. *The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence*

---

7. AIR 1983 SC 454 at 460
8. (1987) 4 SCC 611 : AIR 1987 SC 2386

is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

(12) In **Sardar Singh Vs. Union of India** [9] **,** a Jawan serving in an Indian Army was granted leave and while going to his home town, he purchased eleven bottles of rum from army canteen though he was entitled to carry only four bottles. In court martial proceedings, he was sentenced to undergo R.I. for three months and was also dismissed from service. His petition under Article 226 of the Constitution was dismissed by the High Court. The petitioner approached the Supreme Court. Holding the action arbitrary and punishment severe, the Supreme Court set aside the order.

(13) Here is a case, where nothing is brought on record to show that the petitioner is a habitual drunkard and used to come to the school premises in drunken state regularly or quite often. It has come in the evidence of the petitioner that on the fateful day, having applied for leave, he had gone to the market and his friends offered drink; he consumed it and since the consumption of alcohol was a new experience for him, he felt drowsiness immediately after consumption of the alcohol and while returning home, he remembered that he had left some of his articles in the school premises and therefore, he had come to the school premises to pickup the left-out articles belonging to him. It is not the case of the disciplinary authority that the petitioner in a drunken state entered the school premises, misbehaved with any staff or the Principal or created any nuisance etc. Undeniably, the conduct of an employee

---

9. (1991) 3 SCC 2113 : AIR 1992 SC 417

of school consuming alcohol while going to the school premises itself is an objectionable conduct and that conduct cannot be overlooked by the school management, but, at the same time, the disciplinary action that may be taken by the School management in such cases should be guided by the postulates of Article 14, i.e., principles of the reasonableness, fairness, proportionality and non-arbitrariness. The penalty that may be imposed on a delinquent by virtue of Article 14 postulates should be reasonable and proportionate to the gravity of misconduct. It is stated before us by learned counsel for the petitioner that the petitioner is a married man with a family consisting of number of dependents to support and since he is out of employment, the whole family is in penury and unbearable hardship. Taking into account the totality of the facts and circumstances of the case, the gravity of the misconduct committed by the petitioner and in the premises of law declared by the Apex Court, we are of the considered opinion that the extreme penalty of removal from service, which is regarded as an economic capital punishment, and it violates Article 21 right if unjustified, is too severe and shockingly disproportionate to the gravity of misconduct committed by him. In that view of the matter, we are inclined to step in under Article 226 and reduce the penalty.

(14) In the result and for the foregoing reasons, the writ petition is allowed in part, and in substitution of the penalty imposed by the disciplinary authority as confirmed by the appellate authority, we direct reinstatement of the petitioner into service with continuity of service only for the purpose of pensionary benefits. We direct that the petitioner is not entitled to two annual increments without any cumulative effect. Further, we direct that the petitioner is not

entitled to any back-wages. We think that the above terms would meet the ends of justice. No costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge

Rao/Sabnu